

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Bozidar Ferek-Petric      Examiner: Mehta, Bishma  
Serial No. 10/695,848      Group Art Unit: 3767  
Filing Date: October 29, 2003      Docket No.: P0010438.01  
Title: IMPLANTABLE ELECTROPORATION THERAPY DEVICE AND  
METHOD FOR USING SAME

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**Reply Brief**

COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

The following Brief is submitted responsive to the Examiner's answer mailed May 17, 2010. The following Brief addresses only arguments newly made in the Response to Arguments section of the Examiner's answer.

Any required fee will be made at the time of submission via EFS-Web. In the event fees are not or cannot be paid at the time of EFS-Web submission, please charge any fees under 37 CFR § 1.16, 1.17, 1.136(a), or any additional fees to Deposit account 13-2546.

### **Response to Examiner's new arguments**

The Examiner's comments correctly reflect the fact that the argument in the Appeal Brief submitted by the attorney for Applicants obviously and erroneously substituted stimulation of the pancreas in Houben with stimulation of the heart. The attorney for Applicants apologizes for this confusing argument regarding Houben. The corrected argument, consistent with the teaching of Houben, is set forth below and is taken verbatim from Applicant's response filed in January, 2009. The Examiner is thus familiar with the argument as correctly stated.

"All rejections are based upon the argument that Houben makes it obvious to add qRs synchronization to Whitehurst, and thus produce the claimed invention. However, this argument ignores the fact that synchronization in Houben is for a purpose completely inapplicable to the device of Whitehurst. In Houben, synchronization is provided to prevent the qRs complex from interfering with the sensing of the response of the tissue to which the electrical pulses are applied. No such sensing takes place in Whitehurst, as the electrical pulses are applied for an entirely different purpose. Similarly, synchronization as claimed in conjunction with the present application is for a purpose completely unrelated to the purpose of synchronization in Houben. Absent the teaching of the present application, one of skill in the art would conclude that adding qRs synchronization to Whitehurst would be of no value, as the tumor to which the electrical pulses are applied is not sensed and would apparently provide no signals to sense anyway. Thus, absent the teaching of the present application, the combination of Whitehurst and Houben effectively teaches away from the invention as claimed, rather than rendering it obvious. The added teachings of Sterzer and weaver do not overcome this deficiency."

With this correction to Applicant's arguments, it is respectfully asserted that the new arguments presented by the Examiner in the Answer are clearly erroneous.

In the Response to Arguments section of the Answer, The Examiner now argues with regard to all grounds of rejection that it would be obvious to add the qRs

synchronization of Houben et al to the method of Whitehurst et al. ".to reduce cardiac interference (see Abstract and lines 20 – 49 of Column 5)." The cited text in fact states that what this actually means is that "each stimulus pulse is timed to be offset from the QRS signal which can interfere with the pancreas sensing." (sensing of signals from the pancreas). There is no actual dispute on this point

As there is no signal to be sensed from the organ being stimulated in Whitehurst, there cannot be any corresponding "cardiac interference" that needs to be avoided. The clear teaching of Houben with regard to qRs synchronization is thus that it would serve no useful purpose in the method of Whitehurst. As such, its addition to Whitehurst is counter-indicated by Houben, precisely as argued repeatedly by Applicants.

Withdrawal of the rejections based upon grounds A, B, C and D is again respectfully requested.

The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546 for entry of the instant Response.

Respectfully submitted,

Date: July 16, 2010

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